

STIPULATIONS

A. Construction and Operation

1. Except where noted below, the route of the cable follows the south shoulder of Pine Town Lane and the BLM's Deer Creek Road to approximately the head of Road Gulch. Beyond Road Gulch, it follows the south wheel track of the road to its intersection with Idaho Power's power line ORE 05129. It then descends to the bottom of the slope, parallel to the power line until that line veers off. At the foot of the slope near Brownlee, the route follows the primitive road to its intersection with the paved road at the bridge, then follows the west shoulder of the paved road into Brownlee Village.
2. If possible, conduct all construction and maintenance activities when there is no flow in intermittent streams.
3. During surface disturbing construction and maintenance activities, the holder shall ensure that all construction equipment and vehicles are cleaned of all vegetation (stems, leaves, seeds, and all other vegetative parts) prior to entering public lands in order to minimize the transport and spread of noxious weeds. During surface disturbing construction and maintenance activities, the holder shall ensure that all construction equipment and vehicles are cleaned of all vegetation (stems, leaves, seeds, and all other vegetative parts) prior to leaving public lands in areas that are known by the authorized officer of the BLM to be infested with noxious weeds.
4. No construction or maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of three (3) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
5. The holder shall limit excavation to the areas of construction or maintenance. No borrow areas for fill material will be permitted on the site.
6. Do not widen the road prism at any location. Exceptions may be made at certain culvert locations where a larger culvert or culvert extension is installed.
7. Repair the road prism as necessary after installation of the cable.
8. Backfill shall be compacted adequately over the fiber optic cable to prevent settling and the creation of a depression.
9. Excess excavated soil and other material not suitable for backfill shall be evenly spread within the right-of-way.

10. At drainage crossings, remove all excess fill material and restore the contour of the channel to avoid a restriction in the water flow. Also, restore the stream bank as necessary to prevent erosion or cutting of the bank.
11. Place sediment control or retention structures where needed and/or as directed by the authorized officer.
12. Culvert maintenance or replacement. Refer to Exhibits C and D. [\(culvert work descriptions and the culvert location maps are attached to the EA\)](#)
 - a. Where a culvert is to be replaced or reset, shape the channel bottom to accommodate the culvert, with both the culvert and channel aligned to minimize erosion.
 - b. Place the culvert on the channel bottom so that water flows smoothly through the culvert and into the channel, without any fall of water onto the channel bottom.
 - c. Place adequate backfill material over culverts that are replaced or reset. Backfill depth is to be 12 inches or one-half the diameter of the culvert, whichever is greater. No equipment shall be routed over a culvert until backfill depth is adequate to protect the culvert.
 - d. Backfill over culverts shall be thoroughly compacted.
 - e. At culvert location no. 18, do not do any excavation. If any berm construction is needed, it must be constructed of weed-free material brought in from off-site.
 - f. Confine tail ditch cleanout to the existing drainage bottom.
13. Protection of the two known archaeological sites:
 - a. Before constructing in the vicinity of these two sites, contact BLM and arrange for the presence of a cultural resource monitor during said construction.
 - b. Allow no disturbance to occur outside of the road prism near these sites.
 - c. In the vicinity of the west site, install the cable in the tread of the road (rather than along the shoulder) between the two stakes placed on August 16, 2002.
 - d. Do not place any pedestals or warning markers near these sites.
14. If fences, gates, or brace panels are damaged, they shall be reconstructed to appropriate Bureau standards and/or specifications as determined by the

authorized officer.

15. If cattleguards are damaged or dislocated, they shall be repaired or replaced to the satisfaction of the authorized officer.
16. To the extent possible, avoid damage to the tile pipe or other piping in the collection area for the Round Mountain spring development. If damage occurs, it must be repaired to the satisfaction of the authorized officer. Repair work is to be done with the cooperation and consultation of the grazing permittee(s), as appropriate.
17. The holder shall construct waterbars on disturbed areas where and if needed, as directed by the authorized officer. Waterbars are to be constructed to: (1) simulate the imaginary contour lines of the slope (ideally with a grade of one or two percent); (2) drain away from the disturbed area; and (3) begin and end in vegetation or rock whenever possible. It is anticipated that waterbars will be needed approximately every 20 feet on the steep slope above the river. The holder shall contact BLM when construction starts on this portion and arrange for an inspection to determine waterbar location.
18. The holder shall repair any damage resulting from construction to waterbars or other drainage measures on the Deer Creek - Brownlee Overlook Road.
19. The holder shall seed where required with the species listed below, using an agreed upon method suitable for the location. Seeding is to be done on the steep slope above the river, along the primitive portion of the road, and at drainage crossings. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS) per acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with state law and within 9 months prior to purchase. Commercial seed shall be either certified or registered seed. The seed container shall be tagged in accordance with state law and available for inspection by the authorized officer. The seeding shall be repeated until a satisfactory stand is established as determined by the authorized officer.

Seed Mixture

<u>Species of Seed</u>	<u>Variety</u>	<u>Pounds/acre PLS</u>
Bluebunch wheatgrass	Secar	13
Idaho fescue		13
Sandberg's bluegrass		4

Total 30 lbs./acre PLS (broadcast rate)

If the seed is drilled, the above rates may be cut in half.

Pure Live Seed (PLS) formula: % of purity of seed mixture time % germination

of seed mixture = portion of seed mixture that is PLS.

If mulch is used on seeded areas, it shall be weed free straw or hay.

20. Comply with any requirements of the Baker County Road Department concerning the installation of the cable along Pine Town Lane.
21. Avoid any impact to structures on the electric power lines along the route.
22. Comply with any requirements of Idaho Power concerning the installation of the cable along and under the paved road.
23. Warning markers may be placed where deemed necessary. It is recommended that they be placed no further than one mile apart, and at the cattle guard and larger culvert locations.
24. Except for emergency repairs, the holder shall notify the authorized officer at least ten working days prior to any major repair or replacement activities.

B. Termination

1. If the holder shall not use the right-of-way for a continuous five year period for the purpose for which it was granted, the right-of-way will be presumed abandoned (43 CFR 2803.4(c)).

If the abandoned structures or improvements are not removed within a reasonable length of time, as determined by the authorized officer, they will become the property of the United States. The holder will be liable for any expense in removing the structures and restoration of the site (43 CFR 2803.4-1).

2. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

C. General

1. The holder may authorize other parties to use excess fibers and charge for that use (43 CFR 2801.1-1(f)). If any such arrangement is made, the holder shall immediately notify the authorized officer. The holder will continue to be responsible for compliance with all terms and conditions of this grant. The authorized officer may assess rental charges if any such arrangement is made.

2. Upon request, the holder shall provide to the authorized officer staking sheets, as built drawings, and/or fiber content map.
3. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
4. Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
5. The United States will not be held liable for any damage to the facility caused by the general public, natural disaster, or action stemming from normal land management activities of the Bureau of Land Management.
6. The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of public lands under this grant.
7. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any persons working on his behalf on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and mitigation, and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
8. Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
9. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and

Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions of the Survey of the Public Lands of the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

10. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 716.1-761.193). Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102 b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
11. The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (43 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
12. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.

13. The holder of a right-of-way grant is prohibited from discriminating against any employee or applicant for employment under the regulations found at 43 CFR 2801.2 (a) (2).
14. The holder shall conduct all activities associated with the construction, operations, and termination of the right-of-way within the authorized limits of the right-of-way.
15. The holder shall take such measures for prevention and suppression of fire on the grant area and adjacent public lands or public lands used or traversed by the holder in connection with operations as are required by applicable laws and regulations.
16. The authorized officer reserves the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant.
17. This right-of-way is subject to valid existing rights.